IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11267 of 2004
with
SPECIAL CIVIL APPLICATION Nos. 11266, 11268 to 11386, 11390, 11392 to 11397, 11514 to 11523, 12233 and 12348 to 12351 of 2004
(143 Matters)

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL GITABEN RAMANLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11266 to 11350 of 2004

MS AVANI S MEHTA for Petitioner No. 1
MR AD OZA, GOVERNMENT PLEADER for Respondent No. 1-2
MR PRANAV G DESAI for Respondent No. 3
NOTICE SERVED BY DS for Respondent No. 4-5

2. Special Civil Application No. 11351 to 11386, 11390, 11392 to 11397, 11514 to 11523, 12233 and 12348 to 12351 of 2004

MS AVANI S MEHTA for Petitioner No. 1
MS MITA PANCHAL AGP for Respondent No. 1-2
MR PRANAV G DESAI for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 20/12/2004

COMMON CAV JUDGEMENT

In this group of 143 petitions, the petitioners who are primary teachers rendering services in primary schools run by the Municipal School Board of the Baroda Municipal Corporation have claimed that just as teachers in the primary schools run by the District Panchayat Primary Education Committees as well as teachers in the primary schools by the Municipalities and Municipal Corporations are paid salary in the pay-scale of Rs.4000-6000; the first grade higher pay-scale being given to them upon completion of nine years' service should also be the same i.e. Rs.5000-8000 which is being given to the teachers in primary schools run by the District Panchayats upon completion of nine years' service, that the said scale already given to the 63 petitioners should not be withdrawn and that the remaining petitioners be given the same scale instead of offering them the lower scale of Rs.4500-7000.

2. The facts lie in a narrow compass.

2.1 The petitioners are primary teachers employed by the school board of the Baroda Municipal Corporation. At the time of their appointment, under the Revision of Pay Rules, 1987, the pay-scale for primary teachers was Rs.1200-2040. The petitioners' pay was accordingly fixed in the said pay-scale. However, upon coming into force of the Revision of Pay Rules, 1997, with effect from 1.1.1996, the petitioners' pay-scale came to be revised to Rs.4000-6000.

2.2 In the meantime, the Government had introduced the scheme for paying higher grade pay-scales to the Government employees as per the Government Resolution dated 5.7.1991. The scheme was modified and by Government Resolution dated 16.8.1994, the State Government gave the benefit of higher pay-scales to primary teachers also. The resolution provides that upon completion of 9, 20 and 31 years' service, primary teachers will be given first higher grade, second higher grade and third higher grade pay-scales respectively. Thereafter Government Resolution dated 14.8.1998 introduced certain modifications in the scheme to give higher grade pay-scales.

2.3 63 petitioners herein appointed as primary

teachers after 1.1.1996 were granted the first higher grade pay-scale of Rs.5000-8000 upon completion of 9 years' service. The other petitioners were accordingly waiting for the said higher grade pay-scale. However, the petitioners came to learn that by letter dated 1.5.2001 (Annexure "D" to the petition), the Director of Primary Education had informed the Offices of the Local Fund Audit that the primary teachers employed by the Municipal Primary Education Committees (known as Municipal School Boards) were to be given the first higher grade pay-scale of Rs.4500-7000 and the pay-scale of Rs.5000-8000 was to be given as second grade higher pay-scale. The petitioners also came to learn that the Director of Accounts & Treasury also addressed communication dated 16.7.2001 to the Offices of the Local Fund Audit that the primary teachers employed by the District Primary Education Committees were to be given the first higher grade pay-scale of Rs.5000-8000 and the second grade higher pay-scale of Rs.5500-9000, but the primary teachers employed by Municipal Primary Education Committees are required to be given first grade higher pay-scale of Rs.4500-7000 and second grade higher pay-scale of Rs.5000-8000.

2.4 Till July 2004, the 63 petitioners were getting their pay in the first higher grade pay-scale of Rs.5000-8000, but on apprehending that the Administrative Officer of the Baroda Municipal Corporation was now going to act upon the aforesaid instructions and was going to reduce the first grade higher pay-scale from Rs.5000-8000 to Rs.4500-7000, Special Civil Application No. 11273 came to be filed by Nagar Prathmik Shikshak Samiti Karmachari Maha Mandal, Vadodara, a registered union of primary teachers serving in the primary schools of the Municipal School Board of Baroda Municipal Corporation. This Court granted ad-interim relief to maintain status quo in respect of salary of the members of the association. Thereafter when the petition reached hearing on 17.8.2004, the Court (Coram : Hon'ble Miss Justice RM Doshit) held that the petition filed by the Association was not maintainable, but liberty was given to each of the members of the Association to file a substantive petition. Accordingly, that petition came to be disposed of and the present individual petitions came to be filed.

3. While issuing notice, this Court directed the respondents to maintain status quo regarding the petitioners' pay-scale.

4. In response to the notice, affidavit in reply

dated 29.9.2004 has been filed by the Joint Director of Primary education, Gujarat State. Affidavit in reply dated 11.10.2004 has also been filed by the Administrative Officer, Municipal School Board, Baroda Municipal Corporation. All the respondents have resisted the petitions. The relevant submissions made in the respective affidavits will be referred to hereinafter.

5. At the hearing of these petitions, Ms Avani Mehta, learned counsel for the petitioners has raised the following contentions :-

5.1 In view of Government Resolution dated 11.12.1986, the primary teachers employed by the Municipal Corporations/Municipalities are to be given the same benefits which are being given to the primary teachers employees by the District panchayats without any further orders required to be issued by the State Government. Hence, the primary teachers employed by the District panchayats as well as those employed by the Municipal Corporations/Municipalities are given identical pay-scale of Rs.4000-6000. Accordingly, when the primary teachers employed by the District panchayats are being given the first higher grade pay-scale of Rs.5000-8000 upon completion of 9 years' service, the primary teachers employed by the Municipal Corporations are also entitled to get the same first higher grade pay-scale of Rs.5000-8000 upon completion of 9 years' service.

5.2 The primary teachers employed by the Municipal Corporations are similarly situate as the primary teachers employed by the District panchayats. All of them perform the same duties - teaching pupils in Standards I to VII and are governed by the same Bombay Primary Education Act, 1947 and Bombay Primary education Rules, 1949. Hence, the respondent authorities cannot mete out discriminatory treatment to the primary teachers employed by the Municipal Corporations by giving them the first higher grade pay-scale of only Rs.4500-7000, while giving the first higher grade scale of Rs.5000-8000 to primary teachers employed by District Panchayats.

5.3 The respondents are proceeding on an erroneous basis that there is no post of Education Inspector in the Municipal Corporations. Several such Inspectors have been appointed by the Administrative Officer of the Baroda Municipal Corporation. Reliance is placed on several such orders by which some primary teachers are promoted/appointed as Education Inspectors.

5.4 When the primary teachers employed by the

respondent-Municipal Corporation who completed 9 years' service before 1.1.1996 are given pay-sale of Rs.5000-8000 after 1.1.1996, there is no justification not to give the same pay-scale to the primary teachers who completed 9 years' service after 1.1.1996.

5.5 Reliance is placed on the decisions of the Apex Court for invoking the doctrine of "Equal Pay for Equal Work".

6. On the other hand, Ms Mita S Panchal, learned AGP appearing for the State Government and the Director of Primary Education and Mr Pranav G Desai, learned counsel for the Baroda Municipal Corporation have made submissions on the basis of their reply affidavits broadly on the following basis :-

6.1 The gist of the defence of the State Government and the Director of Primary Education is that the first higher grade pay-scale of Rs.5000-8000 is being given to the primary teachers employed by the District panchayats because for them the promotional avenue is the cadre of Education Inspector Class-III in the pay-scale of Rs.5000-8000. For the primary teachers employed by the Municipal Corporations/Municipalities, there is no such promotional post of Education Inspector Class-III. Hence, for them the first higher grade pay-scale is Rs.4500-7000 as stipulated in Clause 3(2) in Government Resolution dated 16.8.1994 read with the Schedule thereto as amended by Government resolution dated 14.8.1998.

Reference is also made to the orders passed by this Court in Special Civil Application Nos. 1425 and 2206 of 2003 wherein a similar grievance was made and the petitioners therein were asked to make a representation to the State Government. The representation made by the Association of Primary teachers employed by the Surat Municipal Corporation came to be rejected by the State Government and communicated to the association through letter dated 13.8.2003 from the State Government in the Education Department (Annexure "R4"). The said decision has become final.

6.2 The stand of the Municipal Corporation is that they have followed the Government instructions and particularly the amended schedule to the Government Resolution dated 16.8.1994 providing that for employees in the pay-scale of Rs.4000-6000, the first higher grade pay-scale would be Rs.4500-7000.

It is further clarified that the primary teachers

of the Baroda Municipal Corporation, who were in the pre-revised pay-scale of Rs.1200-2400, upon completion of 9 years' service prior to 1.1.1996 were given the first higher grade pay-scale of Rs.1400-2600 (pre-revised) and those teachers were, upon revision of the pay-scale, placed in the revised pay-scale of Rs.5000-8000 with effect from 1.1.1996. However, those employees who were in the pay-scale of Rs.4000-6000 with effect from 1.1.1996 were entitled to receive the first higher grade pay-scale of Rs.4500-7000 and the second higher grade pay-scale of Rs.5000-8000 as per the instructions dated 1.5.2001 of the Deputy Director of Education.

6.3 Reliance is placed on the decisions of the Apex Court in support of the submission that in petitions under Article 226 of the Constitution, this Court would not examine the applicability or otherwise of the doctrine of "Equal Pay for Equal Work" as that would require investigation into various factual aspects like the nature of duties, responsibilities, disciplinary control, etc.

7. Having heard the learned counsel for the parties, the Court has given anxious and thoughtful consideration to the rival submissions. But before dealing with the submissions or even before referring to the relevant statutory provisions and Government Resolutions, it is necessary to enumerate the different pay-scales in order to have clarity about the issues involved in this group of petitions :-

Pre-revised Pay-scales (from 1.1.1986 to 31.12.1995)	Revised Pay-Scale (from 1.1.1996 onwards)
1640-2900	5500-9000
1600-2660	
1400-2600	5000-8000
1400-2300	4500-7000
1200-2040	4000-6000

8. Now reference may be made to Government Resolution dated 16.8.1994 laying down the scheme for higher grade pay-scales. The resolution stated that the main intention of the Government was to give the higher

grade pay-scales to the employees who had no opportunity of promotion in their service as Government employees. While in case of the other Government servants, the benefit was to be given upon completion of 9, 18 and 27 years' service, in case of teachers the Government decided to give such benefits to teachers upon completion of 9, 20 and 31 years' service. Clause 3(2) of the resolution is material for the purposes of the present controversy and reads as under :-

"3(2) First Higher Pay Scale means the immediate higher pay scale but in case of separate pay scales or more than one pay scales or promotion for one posts are there then in the case the pay scale of their first higher pay scale in such promotion posts will be treated as the lowest post pay scale.

But, in case there is no pay scale for promotion then in that case the first higher pay scale equivalent to its present salary will be as mentioned in Schedule (1) attached to this Government Resolution.

But, in a special case in the case of additional scale of various pay scales, then in that posts instead of the Higher Pay Scale promotion pay, the higher pay scale as mentioned in Schedule (1) of this Government Resolution equivalent to his present pay scale will be taken into consideration."

The schedule to the said Resolution gave pre-revised pay-scales and higher grade pay-scales against the pre-revised scales. Upon revision of pay-scales by the Gujarat Civil Services (Revision of Pay) Rules, 1998, the pay-scales came to be revised with effect from 1.1.1996. Hence, by Government Resolution dated 14.8.1998, the Government amended Clause 3(2) of the Government Resolution dated 16.8.1994 and particularly revised the schedule thereto. The relevant portion of the said revised schedule reads as under :-

Revised Pay-scale	Higher Grade

(w.e.f. 1.1.1996)	Pay-scale (w.e.f. 1.1.1996)
5500-9000	6500-10500
5000-8000	5500-9000
4500-7000	5000-8000
4000-6000	4500-7000

9. Having regard to the stand adopted by the respondent authorities, two controversies emerge -

(i) whether the primary teachers employed by the Baroda Municipal Corporation have any promotional avenue, and

(ii) irrespective of the answer to the first question, whether the primary teachers employed by Municipal Corporation have any right to get the same first/second/third higher grade pay-scales as are being given to the primary teachers employed by District panchayats.

10. According to the respondents, the schedule to Government Resolution dated 16.8.1994 as amended by Government Resolution dated 14.8.1998 provides that the employees are entitled to get the higher grade pay-scale of their promotional post. For primary teachers employed by District panchayats in the pay-scale of Rs.4000-6000, their promotional post is Education Inspector Class-III in the pay-scale of Rs.5000-8000. Hence, their first higher grade pay-scale would also be of Rs.5000-8000. On the other hand, primary teachers employed by Municipal Corporations and Municipalities are employees in the pay-scale of Rs.4000-6000 who have no promotional avenues and are, therefore, to be given the first higher grade pay-scale of Rs.4500-7000 upon completion of 9 years' service as indicated in clause 3(2) read with the revised Schedule.

11. The petitioners' answer to the above case of the respondent authorities is two fold. In the first place, the Baroda Municipal Corporation also does have the posts of Educational Inspector known as School Inspectors who perform supervisory duties over the primary teachers employed by the Baroda Municipal Corporation. Copies of

orders dated 31.7.1982, 28.3.1983, 26.6.1984, 19.4.1988/24.11.1988, 2.6.1989 and 21.1.2002 are produced by the petitioners with their affidavit in rejoinder dated 18.10.2004. All the said communications/orders do show that the posts of School Inspectors do exist on the establishment of the Baroda Municipal Corporation. However, it also appears from the said communications that School Inspectors, though being given supervisory duties over primary teachers employed by the Baroda Municipal Corporation, are not given any higher pay-scale, but they are only given additional pay over and above the salary in the scale of primary teachers. The orders dated 26.6.1984 and 19.4.1988 also indicate that the posts of School Inspector are filled in by selection from amongst qualified primary teachers who have alteast 10 years teaching experience. It, therefore, appears that inspite of availability of posts of School Inspector, the respondent authorities have not passed any orders sanctioning a separate or higher pay-scale for them.

12. Turning to the provisions of the Bombay Primary Education Act, 1947 Chapter III thereof provides for powers, duties and functions of District school board, authorized municipalities and municipal school boards. Part A (Sections 11 to 15) deals with district school boards. Part B (Section 16 and 17) provides that the State Government may authorize any municipality to control all approved schools within its area. Section 17 reads as under :-

"17.(1) Subject to the provisions of this Act and the rules made thereunder an authorized municipality shall perform the following duties and functions, namely -

(a) ... ...

(b) ... ...

(c) to maintain an adequate staff of Assistant Administrative Officers, Supervisors, Attendance Officers, clerks, teachers, inferior servants and staff as may in the opinion of the State Government be necessary.

(d) ... ...

(e) to sanction with or without variation the budget of the municipal school board;

(f) ... ...

(2) ... ...

(3) The authorized municipality shall, subject to the sanction of the State Government, make regulations -

(i) determining the qualifications, pay and terms of employment of the Assistant Administrative Officers, Supervisors, Attendance Officers, Clerks, inferior servants and other staff;

Part C (Section 18) provides that subject to the provisions of this Act and the rules made thereunder, the municipal school board shall be responsible for the management and control of all primary schools which vest in the authorized municipality and the board shall exercise such powers and perform such duties and functions of the authorized municipality in respect of primary education as may be prescribed.

Sub-section (2) of Section 18 provides that to the provisions of this Act and the rules made thereunder, a municipal school board shall, inter alia,

(a) to prepare schemes to be submitted by the authorized municipality to the State Government for expansion of primary education and to carry out the provisions of such scheme;

(b) to disburse monies from the primary education fund in accordance with the budge sanctioned by the authorized municipality;

Chapter V of the Act provides for administrative machinery and, in so far as the same is relevant, reads as under :-

"20.(1) Every district school board with the approval of the State Government and every authorized municipality shall maintain an adequate staff of Assistant Administrative Officers, Supervisors, Attendance Officers, clerks, primary school teachers and inferior servants and other staff (including engineering staff), as may in the opinion of the State

Government be necessary for the administration, management and control of approved schools within its area .. ...

(1A) ... ...

(2) The staff maintained under sub-section (1) shall be servants of the district school board or of the authorized municipality, as the case may be and shall receive their pay, allowances, gratuities and pensions from its primary education fund. Such staff maintained by a district school board shall receive their provident fund from the fund established under section 46A and the primary school teachers maintained by an authorized municipality shall receive their provident fund from the primary education fund.

(2A) ... ...

(3) The rates of the pay and allowances and terms of employment in respect of all the members of the staff maintained by a district school board and of the primary school teachers maintained by an authorized municipality shall be as fixed from time to time by the State Government.

(4) The State Government may from time to time prescribe the duties to be performed by the staff maintained under sub-section (1)

(5) The State Government may constitute State Level Committee, namely Vidyasahayak Committee to exercise such powers and perform such functions as may be prescribed.

(6) The State Government may constitute Village Education Committee and Village School Constitution Committee to exercise such powers and perform such functions as may be prescribed."

(emphasis supplied)

13. The Bombay Primary Education Act, therefore, provides that while every District School Board has to obtain approval of the State Government for maintaining its staff, as far as the authorized Municipality is concerned (the Municipal School Board maintains and controls all primary schools which vest in the authorized

municipality), it shall maintain an adequate staff of Assistant Administrative Officers, Supervisors, primary school teachers, etc. as may, in the opinion of the State Government, be necessary for the administration, management and control of approved schools within its area. The staff maintained under sub-section (1) of Section 20 shall be servants of the district school board or of the authorized municipality, as the case may be and shall receive their pay, allowances, gratuities and pensions from their primary education fund as per the rates fixed by the Government. It is, therefore, incumbent upon every authorized municipality and the municipal school board to maintain adequate staff of assistant administrative officers, supervisors, clerks, primary school teachers, etc. Of course, how many posts of assistant administrative officers or supervisors in a higher pay scale should be sanctioned is a matter to be decided by the State Government, but the statute does provide for such posts of supervisors for primary schools under every authorized municipality. Various orders issued by the Administrative Officer of the Baroda Municipal Corporation appointing/promoting primary teachers as School Inspectors are, therefore, in consonance with the provisions of sub-section (1) of Section 20 of the Act.

14. The next question is whether in absence of any specific orders of the State Government or the Baroda Municipal Corporation sanctioning higher pay-scale for supervisors or school inspectors, will it be open to this Court to hold that school inspectors under an authorized municipality be paid salary in the scale of Rs.5000-8000. While the answer would not be in the affirmative, at the same time the contents of the Government Resolution dated 11.12.1986 cannot be overlooked. From time to time, the State Government revises the pay-scales and gives various monetary benefits to the Government employees and by the same orders also to panchayat employees. Since such resolutions/orders do not make a reference to the primary teachers employed by the Municipal School Boards, the delay in passing separate orders used to cause hardship to the primary teachers employed by the Municipal Corporations/Municipalities. Hence, the State Government by the said resolution dated 11.12.1986 specifically provides that all the benefits being given to the Government employees (which benefits were also being given to panchayat employees) shall automatically be applicable to the primary teachers employed by the Municipal Corporations/Municipalities with effect from the same date on the same basis and subject to the same conditions.

15. When admittedly the posts of Education Inspector are sanctioned on the set up of the district panchayats and they are being paid salary in the scale of Rs.5000-8000, the question whether the school inspectors appointed by the Baroda Municipal Corporation are also required to be placed in the same pay-scale is a matter which needs consideration by the State Government. Since this aspect does not seem to have been considered by the State Government or the Baroda Municipal Corporation, it would be necessary for the State Government to give a fresh look to the matter and consider it.

16. Coming to the second controversy, whether irrespective of availability of posts of Education Inspector/School Inspector on the set up of the Baroda Municipal Corporation, whether the primary teachers employed by the Municipal Corporation are entitled to claim parity with the primary teachers employed by the district panchayats, it is necessary to note that in the first place all the primary teachers (whether employed by the district panchayats or by Municipal Corporations or Municipalities) are placed in the same pay-scale of Rs.4000-6000 and there is no controversy about that pay-scale. The controversy is that when all the primary teachers are in the same pay-scale of Rs.4000-6000, giving the primary teachers employed by the Municipal Corporations the first higher grade pay-scale of only Rs.4500-7000 after 9 years and the next pay-scale of Rs.5000-8000 after 20 years would amount to discriminatory treatment vis-a-vis giving the primary teachers employed by District panchayats the first higher grade scale of Rs.5000-8000 upon completion of 9 years of service and the next higher grade scale of Rs.5500-9000 after 20 years.

17. The learned AGP has vehemently submitted that since in an earlier matter this Court required the primary teachers of the Surat Municipal Corporation to make a representation to the State Government on this issue and the State Government rejected the representation and that decision was not challenged, this Court would not entertain these petitions.

It is not possible to accept the above contention merely because the decision of the State Government was not challenged by the primary teachers of the Surat Municipal Corporation.

18. At the hearing, the Court's attention was invited to the fact that earlier the primary teachers employed by

the Ahmedabad Municipal Corporation School Board were being given higher pay then the starting pay being given to the primary teachers employed by district panchayats. This was on the basis of the IG Thakore award which resulted into the Ahmedabad Municipal Corporation passing Resolution No. 117 dated 21.5.1976 with effect from 1.1.1976. On account of such higher salary given to the primary teachers employed by the Ahmedabad Municipal Corporation, they were also given the benefit of such higher pay at the time of giving them higher grade pay-scales and pensionary benefits. The Audit Department had raised an objection that payment of such higher salary was not in accordance with the Rules and recovery was sought to be made. This resulted into filing of Special Civil Application Nos. 3256 of 1999 and 10130 and 10135 of 1998. By common order dated 2.7.1999 this Court directed the State Government to have the matter examined by a high power committee headed by the Chief Secretary. The said committee noted the fact that in view of the IG Thakore award, the primary teachers employed by the Ahmedabad Municipal Corporation were granted higher increments for qualifications obtained before 1976 and that once such payments were already given to the primary teachers, they should not be recovered. This was the limited issue which was examined by the high power committee.

19. Neither the State Government nor the high power committee had considered the following anomalies arising on the basis of the present stand of the respondent authorities :-

Length of service		For primary teachers of District Panchayats	For primary teachers of Muni.Corpns/ Municipalities
After 31 years	3rd higher Grade Pay-Scale	6500-10500	5500-9000
After 20 years	2nd higher Grade Pay-Scale	5500-9000	5000-8000
After 9 years	1st higher Grade Pay-Scale	5000-8000	4500-7000

Upto 9 years	Pay-scale	4000-6000	4000-6000

From the above chart, it transpires that what is the first higher grade pay-scale for panchayat teachers (9 years' service) is the second higher grade pay-scale for municipal teachers (20 years' service) and what is the second higher grade pay-scale for panchayat teachers (20 years service) is the third higher grade pay-scale for municipal teachers (31 years' service).

20. In the above view of the matter, there is no substance in the contention urged by the learned AGP that the matter having already been examined, no directions need to be issued to the State Government. Nothing has been pointed out as to which factors were considered by the Government before turning down the representation of the primary teachers of the Surat Municipal Corporation. Merely because that decision was not challenged by those primary teachers, it cannot be said that the present petitions are not required to be entertained. In any case, this Court does not propose to give any opinion on the merits of the controversy, but only the relevant factors and the existing anomalies are to be considered by the State Government while giving a fresh look to the matter.

21. Ms Avani Mehta, learned counsel for the petitioners has relied on the decision of the Apex Court in State of Himachal Pradesh vs. HP State Recognized & Aided Schools Managing Committees & Ors., (1995) 4 SCC 507 in support of the contention that right to primary education being a fundamental right, the State is under a constitutional obligation to provide free education to the children till they complete the age of 14 years; the State Government is accordingly bound to meet the total expenditure of the primary schools to that extent, whether they are Government schools or aided schools. The learned counsel has heavily relied on para 10 of the said decision which reads as under :-

"10. It is, therefore, too late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary, allowances etc. with their counterparts in the government schools. The question, for our consideration, however, is whether the State Government or the Management is to meet the consequent expenditure."

The learned counsel has relied on the following principles laid down in Indra Sayhnew vs. Union of India, AIR 2000 SC 498 (para 66) :-

> "What we mean to say is that Parliament and the Legislature in this country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Art. 14 of which Art. 16(1) is a facet. Whether creamy layer is not excluded or whether forward castes get included in the list of Backward Classes, the position will be the same, namely, that there will be a breach not only of Art. 14 but of the basic structure of the Constitution. The non-exclusion of the creamy layer or the inclusion of forward castes in the list of Backward Classes will, therefore, be totally illegal. Such an illegality offending the root of the Constitution of India cannot be allowed to be perpetuated even by constitutional amendment."
>
> (emphasis supplied)

The learned counsel for the petitioners has also relied on the decision of the Apex Court in Vishundas Hundumal vs. State of Madhya Pradesh, AIR 1981 SC 1636 in support of her contention that when the Court finds discrimination unconsciously indulged into by inadvertence or oversight on the part of a governmental agency, the Court can rectify the same by taking a constructive approach by removing the discrimination by putting the petitioners in the same class as those who have enjoyed favourable treatment by inadvertence on the part of the State Government.

22. On the other hand, Ms Mita Panchal, learned AGP for the respondent authorities and Mr Pranav G Desai, learned counsel for the Baroda Municipal Corporation have strongly relied on the decisions of the Apex Court in State of UP vs. JP Chaurasia, (1989) 1 SCC 121, State of MP vs. Pramod Bharatiya, (1993) 1 SCC 539, Shyam Baby Verma vs. Union of India, (1994) 2 SCC 521 and State of Orissa vs. Balaram Sahu, (2003) 1 SCC 250 in support of their contention that in a petition under Article 226 of the Constitution, the Court would not undertake the inquiry into various factual aspects about the nature of duties of the Educational Inspectors under the District Panchayats and the persons entrusted with the function of supervision over primary teachers under Municipal

Corporations.

23. In State of UP vs. JP Chaurasia, (1989) 1 SCC 121, the Apex Court held that equal pay does not just depend upon either the nature of work or volume of work. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities. If there is any such determination by the Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. The principle of "Equal Pay for Equal Work" has no mechanical application in every case of similar work. Higher pay scale to avoid stagnation or resultant frustration for lake of promotional avenues is very common in career service.

24. In light of the aforesaid principles, it would not be for this Court to undertake the exercise of finding out parity between the post of Educational Inspectors under the District panchayats and the School Inspectors under the Municipal Corporations. However, the controversy in the present case arises in respect of the first higher grade pay-scale (and similar would be the controversy in respect of second and third higher grade pay-scales) payable to the primary teachers upon completion of first nine years of service. As already indicated above, no Pay Commission nor the Expert Committee has looked into the grievance raised in the present petitions about discrimination to primary teachers employed by the Municipal Corporations/Municipalities in the matter of first/second/third higher grade pay-scales upon completion of 9/20/31 years' service as already illustrated in the chart as set out in para 19 hereinabove. There is prima facie substantial difference between the first/second/third higher grade pay-scales for primary teachers employed by the municipal corporations on the one hand vis-a-vis such pay-scales for primary teachers of District panchayats on the other hand. There does not appear to be any conscious application of mind on the part of the State Government

for the purpose of looking into the aforesaid grievance. Merely clause 3(2) of the Government Resolution dated 16.8.1994 may be the answer of an auditor implementing the Government instructions, that cannot be the reply from the policy maker charged with violation of equality clause enshrined in Articles 14 and 16 of the Constitution.

25. Even while noticing the fact that the teachers employed in Municipal Corporations and in district panchayats mainly perform the function and discharge the duty of teaching pupils from Standards I to VII, it is also necessary to refer to the following duties of primary teachers as set out in Rule 70 of the Bombay Primary Education Rules, 1949.

"70. Duties of Primary School Teachers - (1) Duties of Primary School Teachers - Subject to such instructions as may be issued by the Administrative Officer, a primary school teachers shall -

(a) be primarily responsible for the efficient effective education including physical education of the pupils in his charge.

(b) attend the school punctually, be present in the school during the appointed school hours and devote his whole attention to teaching or class-work and shall not do any private or official work during these hours except that on the last day of the month nor more than three hours may be devoted to completing the registers for the month ended and writing out the registers for the ensuing month and preparing such other monthly registers or reports as may be required by the head teacher;

(c) take roll-call at the expiry of the first period or hour in each session in the morning or forenoon and in the afternoon or evening;

(d) make all possible efforts to improve the attendance in the school -

(i) by inducing the parents of children, especially children of

the compulsory age-group, to get their children enrolled in School and to attend school regularly,

(ii) by establishing personal contact with parents of non-attending children enquiring about the cause of their absence or irregular attendance, and inducing them to cause their children to attend school regularly;

(e) assist the head teacher and the Assistant Deputy Educational Inspector in the work pertaining to the census of children and collection of census statistics and serve attendance notices if so required by the head teacher;

(f) collect fees, if any, from pupils in his charge and had over the amount of such fee collections to the head teachers as directed by him;

(g) be responsible for keeping accurately and neatly the necessary registers and other records as required by the head teacher;

(h) assist the head teacher as required by him, in the general organization of the school including games and sports in keeping the school building and premises clean, in holding annual of periodical examinations, in arranging extra-curricular activities, and in distributing books, slates, educational requirements, milk, meals and clothes to pupils in his charge;

(i) be responsible for incalculating in his pupils habits of cleanliness and neatness and respect for orderly behaviour and participate in activities organized for the purpose;

(j) under the directions of the head teacher, assist the villagers in developing corporate life, in organizing festivals, sports and gymnastics in the village and generally improving the condition in the

village.

(k) promote communal harmony and good will among his pupils and see that no disability of any kind is imposed on any pupils on the ground of his caste or community.

(l) to (n) ... ...

26. Unfortunately, the quality of services being rendered in schools run by the local authorities whether municipal schools or panchayat schools has fallen much below expectations. The surveys made about the quality of services rendered by the teachers in schools run by local authorities in urban as well as in rural areas need to be referred to. The Times of India dated 13.10.2004 contains the following report :-

"GCERT to repeat education improvement campaign.

Enthused by the response to its education quality improvement campaign launched last year in municipal schools across the state, the Gujarat Council for Educational Research & Training (GCERT), has decided to repeat the experiment this year.

The massive exercise is to be kicked off in December with the only difference this year being that instead of just zeroing in on weak students, this campaign will cover nearly all of the 50 lakh students of municipal schools of the state.

GCERT director Nalin Pandit told TNN that the campaign would cover all municipal school students of class 3-7 across the statement and would be carried out between December 11-30.

"Our earlier drive yielded good results. But we had simply concentrated on 10 lakh students who did not even have the basic reading, writing and numerical skills. In this campaign, our target will be to strengthen the learning skills of all students and help them understand what they are studying", Pandit said.

"We are training about 1.5 lakh teachers for this campaign, where they will be teaching

from specially prepared learning modules. This campaign will also reinforce concepts in the minds of the weaker students covered in the earlier drive", Pandit added.

The GCERT has designed modules based on the study done by the Bhavnagar University identifying the weak sports in students. "The ministry of human resources development too was appreciative of our efforts and has now suggested to our peer centres in other states to follow our model," he said.

According to sources, there are about 35 per cent students who still do not have reading, writing or numerical skills.

Nutan Raval, deputy director of Ahmedabad district institute of education and training (DIET) said, "In the municipal schools of Ahmedabad for instance, close to 70,000 students of the over 1.5 lakh, did not have the basic learning skills. But in the campaign last year we achieved 70 per cent success and we hope to clock even better result this year."

(emphasis supplied)

Similarly, Indian Express dated 22.10.2004 contains the following report :-

"Despite drive, teachers continue to be absent.

Two months ago when the Vadodara district panchayat carried out a drive against errant teachers in rural schools of Vadodara, it thought that the problem of absenteeism had been sorted out. But, a follow-up drive conducted recently revealed that nothing has changed.

More than 50 out of 243 teachers in 66 primary schools of Chhotaudepur were found to be skipping work. Following several complaints, the District Development Officer M Thenarassan formed 22 teams to check out primary schools in the taluka. During the drive, the teams found three schools locked.

"On record, the school was open. But, the teachers were away for their own work," revealed a team member.

> Later, one of the teams visited a school near Chhotaudepur town. "Everything was normal. However, when we returned an hour later, we found the teachers and students missing. Apparently, they must have known that we were coming to check them out, but never expected us to return", said another official.
>
> The DDO said that notices have been issued to errant teachers and the District Primary education Officer (DPEO) has been asked to ascertain the number of days the teachers had remained absent.
>
> Regarding the action to be taken against errant teachers, Thenarassan said, "Depending on the number of days they have remained absent, we will deduct money from their salaries. This will be followed by disciplinary action."
>
> (emphasis supplied)

27. The above surveys and similar such reports which may be available with the Government should be taken into consideration while the State Government would reexamine the entire matter as to whether the primary teachers employed by the district panchayats and primary teachers employed by the Municipal Corporations/Municipalities should get the same first/second/third higher grade pay-scales. It appears to the Court that looking to the gravity of the issues involved and the importance which primary education must be given, the controversies which are the subject matter of the present petitions should not be considered and decided by the State Government as merely with reference to mere interpretation of the Government resolution dated 16.8.1994/14.8.1998 nor should they be considered as the work of an auditor applying various Government resolutions and Rules, but as issue of very vital concern which would have a bearing on the quality of primary education which is of paramount importance for the development of the entire nation. Now providing primary education has also been considered as the fundamental duty of the State under Article 21 of the Constitution. While giving a fresh look to the matter and taking a fresh decision in the matter, it would be open to the State Government to prescribe any further criteria or scrutiny before giving higher grade pay-scales over and above prescribing completion of particular number of years' service put in by primary teachers in schools run by local authorities.

28. The petitions are accordingly partly allowed. The State Government shall examine the controversies which are subject matter of these petitions afresh in light of the observations made in this judgment and particularly as to -

(i) what should be the pay-scale payable to the school inspectors/education inspectors/supervisors for primary schools managed and controlled by Municipal Corporations/ Municipalities / District Panchayats;

(ii) when the pay-scale of primary teachers employed by the Municipal Corporations/Municipalities and of those employed by the district panchayats is the same, whether it is necessary to provide different first/second/third higher grade pay-scales for primary teachers employed by Municipal Corporations/Municipalities.

It will be open to the State Government to hear the petitioners' Association and similar other associations or their Federation and the representatives of local authorities and educationists before taking the final decision in the matter.

The State Government shall take decision in the matter by 30th June 2005.

Till the State Government takes a fresh decision in the matter, the petitioners who are already drawing salary in the first higher grade pay-scale of Rs.5000-8000 shall continue to draw the salary in the same pay-scale. In case the decision is adverse to the petitioners, it will be open to them to challenge such decision. The decision shall, of course, be communicated to the Nagar Prathmik Shikshak Samiti Karmachari Maha Mandal Vadodra.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-